

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case number 1D-2007-65804

MARIO HINOJOSA

11548 Cantlay Street
North Hollywood, CA 91605

Physical Therapist License Number 7940,

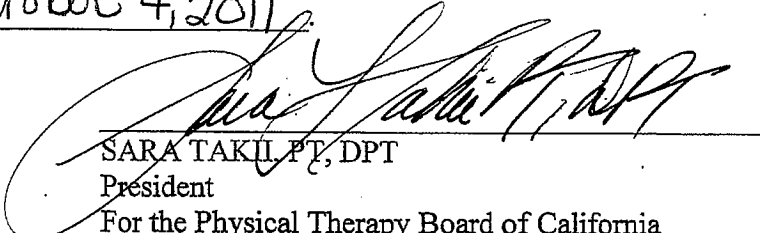
Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 3, 2011.

IT IS SO ORDERED October 4, 2011.


SARA TAKIL, PT, DPT

President

For the Physical Therapy Board of California

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
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7 Attorneys for Complainant

8
9 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case number ID-2007-65804

13 MARIO HINOJOSA

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 11548 Cantlay Street
15 North Hollywood, CA 91605

16 Physical Therapist License number 7940,

17 Respondent.
18

19
20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical Therapy
24 Board of California ("Board"). He brought this action solely in his official capacity and is
25 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
26 Wendy Widlus, Deputy Attorney General.
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28

2. Respondent Mario Hinojosa, PT (Respondent) is represented in this proceeding by attorney Paul L. Cass, whose address is 7803 Madison Avenue, Suite 610, Citrus Heights, California 95610.

3. On or about February 7, 1977, the Board issued Physical Therapy license number 7940 to Mario Hinojosa "Respondent". That license was in full force and effect at all times relevant to the charges brought in Accusation number 1D-2007-65804 and will expire on April 30, 2012, unless renewed.

JURISDICTION

4. Accusation number 1D-2007-65804 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 22, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation number 1D-2007-65804 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation number 1D-2007-65804. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 8. Respondent admits the truth of the First and Fifth Cause for Discipline in Accusation
3 number 1D-2007-65804.

4 9. Respondent agrees that his Physical Therapy license is subject to discipline and he
5 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
6 below.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Physical Therapy Board of
9 California. Respondent understands and agrees that counsel for Complainant and the staff of the
10 Board may communicate directly with the Board regarding this stipulation and settlement,
11 without notice to or participation by Respondent or his counsel. By signing the stipulation,
12 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
13 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
14 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
15 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
16 the parties, and the Board shall not be disqualified from further action by having considered this
17 matter.

18 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
20 effect as the originals.

21 12. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 DISCIPLINARY ORDER

25
26 IT IS HEREBY ORDERED THAT Physical Therapy license 7940 issued to Respondent
27 Mario Hinojosa is revoked. However, the revocation is stayed and Respondent is placed on
28 probation for five (5) years on the following terms and conditions.

MT

1 1. RESTRICTION OF PRACTICE - HOME CARE The Respondent shall not provide
2 physical therapy services in a patient's home.

3 2. RESTRICTION OF PRACTICE - SOLO PRACTICE The Respondent shall be
4 prohibited from engaging in the solo practice of physical therapy.

5 3. CALIFORNIA LAW EXAMINATION - WRITTEN EXAMINATION ON THE
6 LAWS AND REGULATIONS GOVERNING THE PRACTICE OR PERFORMANCE OF
7 PHYSICAL THERAPY

8 Within 90 Days of the effective date of this decision, Respondent shall take and pass the
9 Board's written examination on the laws and regulations governing the practice of physical
10 therapy in California. If Respondent fails to pass the examination, Respondent shall be suspended
11 from the practice of physical therapy until a repeat examination has been successfully passed.
12 Respondent shall pay the costs of all examinations.

13 4. RESTRICTION OF PRACTICE - PROHIBITION OF SELF EMPLOYMENT OR
14 OWNERSHIP Respondent shall not be the sole proprietor or partner in the ownership of any
15 business that offers physical therapy services. Respondent shall not be a Board member or an
16 officer or have a majority interest in any corporation that offers or provides physical therapy
17 services.

18 5. RESTRICTION OF PRACTICE - NO SUPERVISION OF PHYSICAL THERAPIST
19 LICENSE APPLICANTS, PHYSICAL THERAPIST ASSISTANT LICENSE APPLICANTS
20 Respondent shall not supervise any physical therapist license applicants or physical therapist
21 assistant applicants during the entire period of probation. Respondent shall terminate any such
22 supervisory relationship in existence on the effective date of this probation.

23 6. RESTRICTION OF PRACTICE - NO EMPLOYMENT OR SUPERVISION OF
24 PHYSICAL THERAPIST ASSISTANTS Respondent shall not supervise any physical therapist
25 assistants until Respondent successfully completes a physical therapy continuing education
26 program or programs in supervision of physical therapy assistants and physical therapy aides
27 which shall total not less than eight (8) hours. Respondent shall terminate any such supervisory
28 relationship in existence on the effective date of this Decision until Respondent successfully

1 completes a physical therapy continuing education program or programs in supervision of
2 physical therapy assistants and physical therapy aides which shall not be less than eight (8) hours.
3 After said class or classes is/are successfully completed by Respondent he may then supervise
4 physical therapy assistants.

5 7. RESTRICTION OF PRACTICE - NO EMPLOYMENT OR SUPERVISION OF
6 PHYSICAL THERAPY AIDES Respondent shall not supervise any physical therapy aides until
7 Respondent successfully completes a physical therapy continuing education program or programs
8 in supervision of physical therapy assistants and physical therapy aides which shall total not less
9 than eight (8) hours. Respondent shall terminate any such supervisory relationship in existence
10 on the effective date of this Decision until Respondent successfully completes a physical therapy
11 continuing education program or programs in supervision of physical therapy assistants and
12 physical therapy aides which shall not be less than eight (8) hours. After said class or classes
13 is/are successfully completed by Respondent he may then supervise physical therapy aides.

14 8. EDUCATION COURSE Within 30 days of the effective date of this Decision,
15 Respondent shall submit to the Board, or its designee, for prior approval, a physical therapy
16 remedial educational program or multiple programs in Ethics which shall not be less than eight
17 (8) hours combined which may include programs regarding Ethics over the internet. Within 30
18 days of the effective date of this Decision, Respondent shall submit to the Board, or its designee,
19 for prior approval, a physical therapy remedial educational program or multiple programs in
20 supervision of Physical Therapy Assistants and Physical Therapy Aides which shall not be less
21 than eight (8) hours combined. The class regarding supervision of Physical Therapy Assistants
22 and Physical Therapy Aides may not be taken on line.

23 Respondent shall supply documentation verifying satisfactory completion of course work
24 for both classes: 16 hours course work for the combined eight (8) hours in Ethics programs and
25 the combined eight (8) hours in Physical Therapy remedial education programs in supervision of
26 Physical Therapy Assistants and Physical Therapy Aides. This will be signed by the instructor(s)
27 of the courses and evidence, if applicable, of passing grades on exams/tests given by the
28 instructor.

NA

1 9. PROBATION MONITORING COSTS Respondent shall reimburse all costs
2 incurred by the Board for probation monitoring during the entire period of probation.

3 Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical
4 Therapy Board of California. Failure to make ordered reimbursement within 60 days of the
5 billing shall constitute a violation of the probation order.

6 10. COST RECOVERY Respondent is ordered to reimburse the Board the actual and
7 reasonable investigative and prosecutorial costs incurred by the Board in the amount of
8 \$23,079.05. Said costs shall be reduced, however, and the remainder forgiven, if Respondent
9 pays \$1,000.00 within ninety (90) days of the effective date of the Decision. In the event
10 Respondent fails to pay \$1,000.00 within ninety (90) days of the Decision, the full amount of
11 costs shall be immediately due and payable. Failure to pay the ordered reimbursement, or any
12 agreed upon payment, may constitute a violation of the probation order. The filing of bankruptcy
13 by Respondent shall not relieve Respondent of his responsibility to reimburse the Board. If
14 Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost
15 recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of
16 attachment of earned wages legally available to the Board. Failure to fulfill the obligation could
17 also result in attachment to the Department of Motor Vehicle registrations and/or license
18 renewals.

19 11. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, and
20 statutes and regulations governing the practice, inspections and reporting, of physical therapy in
21 California and remain in full compliance with any court ordered criminal probation.

22 12. QUARTERLY REPORTS Respondent shall submit quarterly declarations under
23 penalty of perjury on forms provided by the Board, stating whether there has been compliance
24 with all the conditions of probation.

25 13. PROBATION MONITORING PROGRAM COMPLIANCE Respondent shall
26 comply with the Board's probation monitoring program.

27 14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in
28 person for interviews with the Board, or its designee, upon request at various intervals.

1 15. NOTIFICATION OF PROBATIONER STATUS TO EMPLOYERS The

2 Respondent shall notify all present or future employers of the reason for and the terms and
3 conditions of the probation by providing a copy of the Initial Probationary License, Statement of
4 Issues, Accusation and the Decision and Order, or Stipulated Settlement to the employer, and
5 submit written employer confirmation of receipt to the Board within 10 days. The notification(s)
6 shall include the name, address and phone number of the employer, and, if different, the name,
7 address and phone number of the work location.

8 16. NOTIFICATION OF CHANGE OF NAME OR ADDRESS The Respondent shall
9 notify the Board, in writing, of any and all name and/or address changes within ten (10) days.

10 17. RESTRICTION OF PRACTICE - CLINICAL INSTRUCTOR OF PHYSICAL
11 THERAPY STUDENT INTERNS OR FOREIGN EDUCATED PHYSICAL THERAPIST

12 LICENSE APPLICANTS PROHIBITED Respondent shall not supervise any physical therapy
13 student interns or foreign educated physical therapist license applicants during the entire period of
14 probation. Respondent shall terminate any such supervisory relationship in existence on the
15 effective date of this probation.

16 18. PROHIBITED USE OF ALIASES Respondent may not use aliases and shall be
17 prohibited from using any name which is not his legally-recognized name or based upon a legal
18 change of name.

19 19. INTERMITTENT WORK If the Respondent works less than 192 hours as a physical
20 therapist or a physical therapist assistant in the physical therapy profession in a period of three
21 months, those months shall not be counted toward satisfaction of the probationary period. The
22 Respondent shall notify the Board if he works less than 192 hours in a three month period.

23 20. TOLLING OF PROBATION The period of probation shall run only during the time
24 Respondent is practicing or performing physical therapy within California. If, during probation,
25 Respondent does not practice or perform within California, Respondent is required to
26 immediately notify the probation monitor in writing of the date that Respondent is practicing or
27 performing physical therapy out of state, and the date of return, if any. Practicing or performing
28 physical therapy by the Respondent in California prior to notification to the Board of the

1 Respondent's return will not be credited toward completion of probation. Any order for payment
2 of cost recovery shall remain in effect whether or not probation is tolled.

3 21. VIOLATION OF PROBATION If Respondent violates probation in any respect, the
4 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
5 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is
6 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
7 matter is final, and the period of probation shall be extended until the matter is final.

8 22. REQUEST TO SURRENDER LICENSE DUE TO RETIREMENT, HEALTH OR
9 OTHER REASONS Following the effective date of this probation, if Respondent ceases
10 practicing or performing physical therapy due to retirement, health or other reasons or is
11 otherwise unable to satisfy the terms and conditions of probation, Respondent may request to
12 surrender his license to the Board. The Board reserves the right to evaluate the Respondent's
13 request and to exercise its discretion whether to grant the request or to take any other action
14 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the
15 tendered license, the terms and conditions of probation shall be tolled until such time as the
16 license is no longer renewable, the Respondent makes application for the renewal of the tendered
17 license, or makes application for a new license.

18 23. COMPLETION OF PROBATION Upon successful completion of probation,
19 Respondent's license shall be fully restored.

20 24. PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE ON
21 PROBATION It is not contrary to the public interest for the Respondent to practice and/or
22 perform physical therapy under the probationary conditions specified in the disciplinary order.
23 Accordingly, it is not the intent of the Board that this order, the fact that the Respondent has been
24 disciplined, or that the Respondent is on probation, shall be used as the sole basis for any third
25 party payer to remove Respondent from any list of approved providers.

26 ACCEPTANCE

27 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
28 discussed it with my attorney, Paul L. Cass. I understand the stipulation and the effect it will

1 have on my PT. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
2 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physical
3 Therapy Board of California.

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DATED:

9/30/11

MARIO HINOJOSA
Respondent

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I have read and fully discussed with Respondent Mario Hinojosa the terms and conditions
and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
its form and content.

DATED:

9/30/11

PAUL L. CASS
Attorney for Respondent

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5 **ENDORSEMENT**

6 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
7 submitted for consideration by the Physical Therapy Board of California of the Department of
8 Consumer Affairs.

9
10 Dated: 10/3/11

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California

13 
14 WENDY WIDLUS
15 Deputy Attorney General
16 Attorneys for Complainant
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28 LA2010502432
dnd stipulation.docx

Exhibit A

Accusation No. 1D-2007-69804

1 EDMUND G. BROWN JR.
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 TRINA L. SAUNDERS
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
PHYSICAL THERAPY BOARD OF CALIFORNIA
SACRAMENTO, CA May 9, 2011
BY Shullis ANALYST

7
8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1D 2007 65804

11 MARIO HINOJOSA, PT
12 11548 Cantlay St.
North Hollywood, CA 91605
13 Physical Therapy Certificate No. 7940,

AMENDED ACCUSATION

14 Respondent.

15
16
17 Complainant alleges:

18 **PARTIES**

19 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity
20 as the Executive Officer of the Physical Therapy Board of California (Board).

21 2. On or about February 7, 1977, the Board issued Physical Therapist Certificate number
22 7940 to Mario Hinojosa, PT (Respondent). The physical therapy certificate was in full force and
23 effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless
24 renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following laws. All
27 section references are to the Business and Professions Code (Code), unless otherwise indicated.

28 4. Section 2660 of the Code states:

1 "The board may, after the conduct of appropriate proceedings under the Administrative
2 Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary
3 conditions upon any license, certificate, or approval issued under this chapter for unprofessional
4 conduct that includes, but is not limited to, one or any combination of the following causes:

5 "(a) Advertising in violation of Section 17500.

6 "(b) Fraud in the procurement of any license under this chapter.

7 "(c) Procuring or aiding or offering to procure or aid in criminal abortion.

8 "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties
9 of a physical therapist or physical therapist assistant. The record of conviction or a certified copy
10 thereof shall be conclusive evidence of that conviction.

11 "(e) Habitual intemperance.

12 "(f) Addiction to the excessive use of any habit-forming drug.

13 "(g) Gross negligence in his or her practice as a physical therapist or physical therapist
14 assistant.

15 "(h) Conviction of a violation of any of the provisions of this chapter or of the Medical
16 Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting
17 the violating of, or conspiring to violate any provision or term of this chapter or of the Medical
18 Practice Act.

19 "(i) The aiding or abetting of any person to violate this chapter or any regulations duly
20 adopted under this chapter.

21 "(j) The aiding or abetting of any person to engage in the unlawful practice of physical
22 therapy.

23 "(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related
24 to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

25 "(l) Except for good cause, the knowing failure to protect patients by failing to follow
26 infection control guidelines of the board, thereby risking transmission of blood-borne infectious
27 diseases from licensee to patient, from patient to patient, and from patient to licensee. In
28 administering this subdivision, the board shall consider referencing the standards, regulations, and

1 guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the
2 Health and Safety Code and the standards, regulations, and guidelines pursuant to the California
3 Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division
4 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne
5 pathogens in health care settings. As necessary, the board shall consult with the Medical Board
6 of California, the California Board of Podiatric Medicine, the Dental Board of California, the
7 Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians
8 of the State of California, to encourage appropriate consistency in the implementation of this
9 subdivision.

10 "The board shall seek to ensure that licensees are informed of the responsibility of licensees
11 and others to follow infection control guidelines, and of the most recent scientifically recognized
12 safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

13 "(m) The commission of verbal abuse or sexual harassment."

14 5. Section 2661 of the Code states:

15 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
16 charge of a felony or of any offense which substantially relates to the qualifications, functions, or
17 duties of a physical therapist is deemed to be a conviction within the meaning of this article. The
18 board may order the license suspended or revoked, or may decline to issue a license, when the
19 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
20 an order granting probation is made suspending the imposition of sentence, irrespective of a
21 subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or
22 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
23 dismissing the accusation, information, or indictment."

24 6. Section 2661.5 of the Code states:

25 "(a) In any order issued in resolution of a disciplinary proceeding before the board, the
26 board may request the administrative law judge to direct any licensee found guilty of
27 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
28 the investigation and prosecution of the case.

1 "(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
2 any event be increased by the board. When the board does not adopt a proposed decision and
3 remands the case to an administrative law judge, the administrative law judge shall not increase
4 the amount of the assessed costs specified in the proposed decision.

5 "(c) When the payment directed in an order for payment of costs is not made by the
6 licensee, the board may enforce the order of payment by bringing an action in any appropriate
7 court. This right of enforcement shall be in addition to any other rights the board may have as to
8 any licensee directed to pay costs.

9 "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be
10 conclusive proof of the validity of the order of payment and the terms for payment.

11 "(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the
12 license or approval of any person who has failed to pay all of the costs ordered under this section.

13 "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
14 reinstate for a maximum of one year the license or approval of any person who demonstrates
15 financial hardship and who enters into a formal agreement with the board to reimburse the board
16 within that one year period for those unpaid costs.

17 "(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund
18 as a reimbursement in either the fiscal year in which the costs are actually recovered or the
19 previous fiscal year, as the board may direct."

20 7. Section 2620.7 of the Code states: "(a) A physical therapist shall document his or her
21 evaluation, goals, treatment plan, and summary of treatment in the patient record.

22 "(b) A physical therapist shall document the care actually provided to a patient in the
23 patient record.

24 "(c) A physical therapist shall sign the patient record legibly.

25 "(d) Patient records shall be maintained for a period of no less than seven years following
26 the discharge of the patient, except that the records of unemancipated minors shall be maintained
27 at least one year after the minor has reached the age of 18 years, and not in any case less than
28 seven years."

1 8. Section 2630 of the Code states:

2 "It is unlawful for any person or persons to practice, or offer to practice, physical therapy in
3 this state for compensation received or expected, or to hold himself or herself out as a physical
4 therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked
5 license issued under this chapter.

6 "Nothing in this section shall restrict the activities authorized by their licenses on the part of
7 any persons licensed under this code or any initiative act, or the activities authorized to be
8 performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing
9 with Section 3500).

10 "A physical therapist licensed pursuant to this chapter may utilized the services of one aide
11 engaged in patient-related tasks to assist the physical therapist in his or her practice of physical
12 therapy. "Patient-related task" means a physical therapy service rendered directly to the patient
13 by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task related to
14 observation of the patient, transport of the patient, physical support only during gait or transfer
15 training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be
16 under the orders, direction, and immediate supervision of the physical therapist. Nothing in this
17 section shall authorize an aide to independently perform physical therapy or any physical therapy
18 procedure. The board shall adopt regulations that set forth the standards and requirements for the
19 orders, direction, and immediate supervision of an aide by a physical therapist. The physical
20 therapist shall provide continuous and immediate supervision of the aide. The physical therapist
21 shall be in the same facility as, and in proximity to, the location where the aide is performing
22 patient-related tasks, and shall be readily available at all times to provide advice or instruction to
23 the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical
24 therapist shall, at some point during the treatment day, provide direct service to the patient as
25 treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and
26 shall correspondingly document the patient's record.

27 "The administration of massage, external baths, or normal exercise not a part of a physical
28 therapy treatment shall not be prohibited by this section."

1 9. California Code of Regulations, title 16, section 1399, states:

2 AA physical therapy aide is an unlicensed person who assists a physical therapist and may
3 be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or
4 by performing patient related tasks.

5 A(a) As used in these regulations:

6 A(1) A patient related task@ means a physical therapy service rendered directly to the
7 patient by an aide, excluding nonpatient related tasks as defined below.

8 A(2) A nonpatient related task@ means a task related to observation of the patient,
9 transport of patients, physical support only during gait or transfer training, housekeeping duties,
10 clerical duties and similar functions.

11 A(b) Under the orders, direction and immediate supervision@ means:

12 A(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to
13 the performance of any patient related tasks by the aide. The evaluation shall be documented in
14 the patient's record.

15 A(2) The physical therapist shall formulate and record in the patient's record a treatment
16 program based upon the evaluation and any other information available to the physical therapist,
17 and shall determine those patient related tasks which may be assigned to an aide. The patient's
18 record shall reflect those patient related tasks that were rendered by the aide, including the
19 signature of the aide who performed those tasks.

20 A(3) The physical therapist shall assign only those patient related tasks that can be safely
21 and effectively performed by the aide. The supervising physical therapist shall be responsible at
22 all times for the conduct of the aide while he or she is on duty.

23 A(4) The physical therapist shall provide continuous and immediate supervision of the aide.
24 The physical therapist shall be in the same facility as and in immediate proximity to the location
25 where the aide is performing patient related tasks, and shall be readily available at all times to
26 provide advice or instruction to the aide. When patient related tasks are provided a patient by an
27 aide the supervising physical therapist shall at some point during the treatment day provide direct
28

1 service to the patient as treatment for the patient's condition or to further evaluate and monitor the
2 patient's progress, and so document in the patient's record.

3 A(5) The physical therapist shall perform periodic re-evaluation of the patient as necessary
4 and make adjustments in the patient's treatment program. The re-evaluation shall be documented
5 in the patient's record.

6 A(6) The supervising physical therapist shall countersign with their first initial and last
7 name, and date all entries in the patient's record, on the same day as patient related tasks were
8 provided by the aide.@

9 10 FIRST CAUSE FOR DISCIPLINE

11 (Gross Negligence- Patient Nicole L.)

12 10. Respondent is subject to disciplinary action under section 2660, as defined by
13 sections 2660, subdivision (g), of the Code, in that he committed gross negligence in his care and
14 treatment of patient Nicole L., as more particularly alleged hereinafter:

15 11. On or about December 12, 2007, Patient Nicole L. presented to Active Body Physical
16 Therapy, for evaluation and treatment. She was referred to the facility by her primary care doctor
17 and was to be treated for tendinitis of the knee. Respondent conducted the patient's initial
18 evaluation, which lasted approximately five minutes. Thereafter, Respondent directed patient
19 Nicole L. to the gym where she was met by Alex Uchenna, who she was told was a therapist.
20 Uchenna assisted the patient with several exercises. Respondent was not in the gym during the
21 time that the patient received treatment. Following the completion of her exercises, Uchenna
22 gave Nicole L. pictures of the exercises that she was to complete as part of her home program.
23 During the time she received treatment there were four or five other patients in the gym.
24 Respondent was not present in the gym.

25 12. On or about December 17, 2007, patient Nicole L. returned to the facility for her
26 second appointment. Upon arrival she was directed by personnel at the reception desk to go
27 straight to the gym. Once in the gym, Uchenna directed Nicole L. to start her exercises.
28 Following her first exercise, Uchenna handed the patient an exercise ball and started to walk

1 away. The patient was puzzled. Uchenna then asked if she forgot her exercises. The patient
2 advised that she had not but that on her last visit none of the exercises she did required the use of
3 an exercise ball. There were five or six other patients in the gym at all times and no more than
4 two aides present. No physical therapist was ever present in the gym. Following her exercises a
5 physical therapy aide, Louie Rivera, performed an ultrasound. At no point during her visit did
6 Nicole L. see, receive treatment from, or have any contact with Respondent, or any other physical
7 therapist.

8 13. Uchenna's care and treatment of Patient Nicole L. was performed within the ordinary
9 course of Respondent's orders, direction and supervision. Ucheanna's actions are therefore
10 properly imputed to Respondent pursuant to section 1399, subdivision (b) (3) of the Regulations.
11 While under Respondent's orders, direction and immediate supervision, Uchenna failed to
12 perform his duties as his aide in a safe and effective manner.

13 14. At all times relevant to the Causes for Discipline alleged herein, Uchenna did not
14 possess a physical therapy license, a physician's and surgeon's certificate, a license as a
15 registered nurse, or any other professional health care license issued by the State of California.

16 15. When patient related tasks are provided to a patient by an aide the supervising
17 physical therapist shall at some point during the treatment day provide direct service to the patient
18 as treatment for the patient's condition or further evaluate and monitor the patient's progress and
19 document same in the patient's record.

20 16. Respondent was grossly negligent in the care and treatment of the patient in that
21 Respondent failed to provide any direct service to patient Nicole L. on December 17, 2007, a date
22 on which an aide provided direct treatment to this patient.

23 SECOND CAUSE FOR DISCIPLINE

24 (Repeated Negligent Acts- Patient Nicole L.)

25 17. Respondent is subject to disciplinary action under section 2660, as defined by
26 sections 2660, subdivision (i), and 2234, subdivision (c) of the Code, in that he has committed
27 repeated negligent acts in his care and treatment of patient Nicole L., as more particularly alleged
28 in paragraphs 11-16, above, which are hereby incorporated by reference and re-alleged as if fully

1 set forth herein. Respondent committed repeated negligent acts in the care and treatment of the
2 patient as follows:

- 3 A. The initial evaluation of the patient was signed illegibly and no printed name
4 appeared on the page as required;
- 5 B. The note written by the aide in the patient record was merely initialled and does
6 not contain the signature of the aide;
- 7 C. Respondent failed to provide any direct service to patient Nicole L. on December
8 17, 2007, a date on which an aide provided direct treatment to this patient.

9 THIRD CAUSE FOR DISCIPLINE

10 (Gross Negligence- Patient Susan B.)

11 18. Respondent is subject to disciplinary action under section 2660, as defined by
12 sections 2660, subdivision (g)¹, of the Code, in that he committed gross negligence in his care and
13 treatment of patient Susan B., as more particularly alleged hereinafter:

14 19. On or about May 27, 2008, patient Susan B. presented to Respondent at Active Body
15 Physical Therapy Inc., for evaluation and treatment due to pain in her left knee. The patient was
16 seen by Respondent for her initial evaluation. An initial evaluation form was dated on May 27,
17 2008. However, the signature is illegible and the patient record does not contain information to
18 identify the signature or professional designation of the person who completed the evaluation.

19 20. The patient returned to the facility on two additional occasions, on and/or about June
20 2, 2008 and June 6, 2008, for treatment.

21 21. On or about June 2, 2008, when patient Susan B. presented to the clinic for her
22 second visit there was no re-evaluation of her condition by Respondent and no documentation of
23 how the patient's treatment should be modified, despite the fact that the patient reported increased
24 knee pain on her first visit, and this pain had not subsided. Respondent did not see or treat the
25 patient on her visit of June 2, 2008.

26 _____
27 ¹ Gross negligence was previously identified in Code section 2260 subdivision (h). The
28 Code was amended in 2008 and the subdivisions were re-lettered. Gross negligence is now
identified in subdivision (g).

22. On all dates of service there is no documentation related to the type of exercises the patient performed, the resistance used, the number of repetitions completed, or the patient's response to the treatment.

23. The standard of care requires that the supervising physical therapist countersign with his or her first initial and last name, and date all entries in the patient's record, on the same day as patient related tasks are provided by an aide.

24. Respondent was grossly negligent in the care and treatment of the patient in that Respondent did not re-assess or provide any direct service to patient Susan B. on June 2, 2008, a date on which an aide provided direct treatment to this patient. The Respondent's grossly negligent behavior is made more egregious by the fact that the patient reported increased knee pain on her first visit, and this pain had not subsided. Respondent did not see or treat the patient on her visit of June 2, 2008.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts - Patient Susan B.)

25. Respondent is subject to disciplinary action under section 2660, as defined by sections 2660, subdivision (i), and 2234, subdivision (c) of the Code, in that he has committed repeated negligent acts in his care and treatment of patient Susan B., as more particularly alleged in paragraphs 20-24, above, which is hereby incorporated by reference and re-alleged as if fully set forth herein. Respondent committed repeated negligent acts in the care and treatment of the patient as follows:

- A. The initial evaluation of the patient was signed illegibly and no printed name appeared on the page as required;
- B. The note written on June 2, 2008, was written by an unidentified person, other than a physical therapist. The note was not clearly signed and initials used were illegible;
- C. Respondent failed to re-assess or provide any direct care to patient Susan B. on June 2, 2008, a date on which an aide provided direct treatment to this patient.

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FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence - Patient Ron B.)

26. Respondent is subject to disciplinary action under section 2660, as defined by sections 2660, subdivision (g), of the Code, in that he committed gross negligence in his care and treatment of patient Ron B., as more particularly alleged hereinafter:

27. On or about December 17, 2007, Patient Ron B. underwent laparoscopic knee surgery. Thereafter he was referred to Active Body Physical Therapy, Inc, for evaluation and treatment.

28. On or about December 21, 2007, Ron B presented to Active Body Physical Therapy, Inc., for evaluation and treatment. Respondent conducted his initial evaluation, which consisted of a conversation that lasted approximately three minutes. Patient Ron B. was not asked to demonstrate any movement of his leg and the therapist did not touch his leg or observe his motion. Following his encounter with Respondent, Ron B. was directed to the "gym floor manager," Uchenna, for treatment. Uchenna assisted the patient with several exercises. Uchenna was treating 3-4 other patients in the gym at the same time. Respondent, nor any other physical therapist was present in the gym during the time that patient Ron B. received treatment.

29. On or about December 26, 2007, patient Ron B. returned to the clinic. He did not see Respondent on this date. Instead, upon arrival he was directed to go straight to the gym, where Uchenna provided treatment. The treatment included patient Ron B. laying on his stomach while the aide pushed his ankle towards his back for three to four minutes. This caused excruciating pain. Thereafter, weights were placed on the patient's leg for several minutes. During the treatment at least three to four other patients were simultaneously being treated by Uchenna. Respondent, nor any physical therapist was present in the gym during the time this patient was treated. Patient Ron B. suffered great pain for several days following his session with Uchenna.

30. Uchenna's care and treatment of Patient Ron B. was performed within the ordinary course of Respondent's orders, direction and supervision. Ucheanna's actions are therefore properly imputed to Respondent pursuant to section 1399, subdivision (b) (3) of the Regulations.

1 While under Respondent's orders, direction and immediate supervision, Uchenna failed to
2 perform his duties as his aide in a safe and effective manner.

3 31. At all times relevant to the Causes for Discipline alleged herein, Uchenna did not
4 possess a physical therapy license, a physician's and surgeon's certificate, a license as a
5 registered nurse, or any other professional health care license issued by the State of California.

6 32. A physical therapist is required to document his examination, as well as
7 reexamination, treatment provided and a discharge summary for every patient. At minimum, an
8 examination includes: past medical history, diagnosis, reason for referral, objective tests and
9 measurements, functional status, treatment goals, treatment program, precautions and a summary
10 of findings.

11 33. When patient related tasks are provided to a patient by an aide the supervising
12 physical therapist shall at some point during the treatment day provide direct service to the patient
13 as treatment for the patient's condition or further evaluate and monitor the patient's progress and
14 document same in the patient's record.

15 34. Respondent was grossly negligent in the care and treatment of patient Ron B. in that:

16 A. Respondent failed to document any initial evaluation in the patient record;

17 B. Respondent failed to provide any direct service to patient Ron B. on December
18 21, 2007, a date on which an aide, provided direct treatment to this patient;

19 C. Respondent failed to provide any direct service to patient Ron B. on December
20 26, 2007, a date on which an aide, provided direct treatment to this patient.

21 SIXTH CAUSE FOR DISCIPLINE

22 (Repeated Negligent Acts - Patient Ron B.)

23 35. Respondent is subject to disciplinary action under section 2660, as defined by
24 sections 2660, subdivision (i), and 2234, subdivision (c) of the Code, in that he has committed
25 repeated negligent acts in his care and treatment of patient Ron B., as more particularly alleged in
26 paragraphs 29-36, above, which is hereby incorporated by reference and re-alleged as if fully set
27 forth herein. Respondent committed repeated negligent acts in the care and treatment of the
28 patient as follows:

- 1 A. Respondent failed to document any initial evaluation in the patient record;
2 B. Respondent failed to provide any direct service to patient Ron B. on December
3 21, 2007, a date on which an aide, provided direct treatment to this patient;
4 C. Respondent failed to provide any direct service to patient Ron B. on December
5 26, 2007, a date on which an aide, provided direct treatment to this patient;
6 D. Respondent failed to document a discharge summary in the patient record.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Gross Negligence - Patient Peter V.)

9 36. Respondent is subject to disciplinary action under section 2660, as defined by
10 sections 2660, subdivision (g), of the Code, in that he committed gross negligence in his care and
11 treatment of patient Peter V., as more particularly alleged hereinafter:

12 37. On or about July 26, 2007, Patient Peter V. presented to Active Body Physical
13 Therapy, Inc., for evaluation and treatment. He had been referred to the facility by his insurance
14 company for therapy on his knees, in hopes that it would prolong his need for knee replacements.
15 On this date he met with Respondent for approximately five minutes. In that meeting Peter V.
16 tried to explain to Respondent the type of pain and trouble that he was having with his knees.
17 Respondent advised patient Peter V. that he had treated thousands of knees and that Peter V.'s
18 knees were no different. Thereafter he escorted patient Peter V. out of his office and introduced
19 him to an aide who took over the patient's care from that point on. While with the aide Peter V.
20 was given a sheet of exercises and told to do them and to apprise the aide when they had been
21 completed. After Peter V. completed his exercises the aide performed a stimulation exercise and
22 iced the patient's knees.

23 38. On or about July 30, 2007, Peter V. returned to Active Body Physical Therapy, Inc.,
24 He did not see Respondent on this date. Instead, upon arrival he was directed to go straight to the
25 gym, where an aide provided treatment. The treatment included patient Peter V. doing a series of
26 exercises with the aide. Thereafter, the patient was instructed to move to a table repeat the same
27 exercises he had done on his first visit. He completed these exercises without supervision. After
28

1 Peter V. completed his exercises the aide performed a stimulation exercise and iced the patient's
2 knees.

3 39. On or about August 1, 2007, Patient Peter V. returned for his third visit. He did not
4 see Respondent on this date. Upon arrival he was directed to an aide. The aide instructed the
5 patient to complete exercises on a weight machine and to ride a bike. Peter V. advised the aide
6 that he was unable to do these things because his knees hurt too much. The aide insisted that
7 Peter V. perform the tasks. The patient began the exercises, but stopped because he was in too
8 much pain to continue. In response to the patient failing to complete the tasks indicated, the aide
9 told Peter V. that he had a bad attitude. Peter V. did not return to the facility after this visit.

10 40. The two page evaluation form dated July 26, 2007, contains the appropriate
11 information. However, it is signed with an illegible signature and does not include a printed or
12 stamped name of the physical therapist.

13 41. The daily notes in the patient record do not contain specificity related to the treatment
14 provided and do not contain any information related to the patient's reaction to the treatment.
15 The notes are not signed legibly and only initials J.C. are used by the treating aide. The notes
16 were written by the aide, J.C., and were not co-signed by Respondent.

17 42. When patient related tasks are provided to a patient by an aide the supervising
18 physical therapist shall at some point during the treatment day provide direct service to the patient
19 as treatment for the patient's condition or further evaluate and monitor the patient's progress and
20 document same in the patient's record.

21 43. Respondent was grossly negligent in the care and treatment of patient Peter V. in that:

22 A. Respondent failed to provide any direct service to patient Peter V. on July 30,
23 2007, a date on which an aide provided direct treatment to this patient;

24 B. Respondent failed to provide any direct service to patient Peter V. on August 1,
25 2007, a date on which an aide, provided direct treatment to this patient.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Repeated Negligent Acts - Patient Peter V.)

3 44. Respondent is subject to disciplinary action under section 2660, as defined by
4 sections 2660, subdivision (i), and 2234, subdivision (c) of the Code, in that he has committed
5 repeated negligent acts in his care and treatment of patient Peter V., as more particularly alleged
6 in paragraphs 40-46, above, which is hereby incorporated by reference and re-alleged as if fully
7 set forth herein. Respondent committed repeated negligent acts in the care and treatment of the
8 patient as follows:

9 A. Respondent failed to provide any direct service to patient Peter V. on July 30,
10 2007, a date on which an aide, provided direct treatment to this patient;

11 B. Respondent failed to provide any direct service to patient Peter V. on August 1,
12 2007, a date on which an aide, provided direct treatment to this patient;

13 NINTH CAUSE FOR DISCIPLINE

14 (Failure to Supervise Physical Therapy Aide - All Patients)

15 45. Respondent is subject to disciplinary action in that he failed to properly supervise the
16 physical therapy provided to patients Nicole L., Susan B., Ron B., and Peter V., by his aides,
17 including Alex Uchenna(Uchenna), and J.C., in violation of section 2630 of the Code and of
18 section 1399 of Title 16 of the California Code of Regulations (Regulations). as more
19 particularly alleged in paragraphs 11-14, 21, 22, 24, 28, 29, 30, 31, 33, 34, 38, 39, 41, and 42,
20 above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

21 TENTH CAUSE FOR DISCIPLINE

22 (Failure to Maintain Adequate and Accurate Records-All Patients)

23 46. Respondent is subject to disciplinary action under section 2620.7 of the Code and
24 section 1399 of the Regulations in that he failed to maintain adequate and accurate records
25 relating to his provision of services to Patients Nicole L., Susan B., Ron B., and Peter V. The
26 circumstances are as follows:

27 47. The facts alleged in paragraphs 17, 19, 22, 23, 25, 34, 35, 40, 41, and 44 are re-
28 alleged and set forth herein.

1 48. Respondent failed to document the delegation to aides, Uchenna, and J.C. of physical
2 therapy services that were performed by aides at Active Body Physical Therapy, Inc. He failed to
3 ensure that the aides properly documented the physical therapy services that were actually
4 rendered to the four above-reference patients, including in some instances the signature of the
5 aides.

6 49. Respondent's failure to maintain legible records, including his failure to counter-sign
7 records the care that aides rendered constituted a failure to maintain adequate patient records.

8 ELEVENTH CAUSE FOR DISCIPLINE

9 (Aiding and Abetting the Unlawful Practice of Physical Therapy- All Patients)

10 50. Respondent is subject to disciplinary action under sections 2660, subdivisions (j) and
11 (k) in that he aided and abetted Uchenna, J.C. and an additional unidentified aide's violation of
12 section 2630 of the Code by their unlawful practice of physical therapy. The circumstances are as
13 follows:

14 51. The facts alleged in paragraphs 11-44, above are alleged and fully set forth herein.

15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Physical Therapy Board of California issue a decision:
18

19 1. Revoking or suspending Physical Therapist License Number 7940, issued to Mario
20 Hinojosa, P.T.

21 2. Ordering Mario Hinojosa, P.T. to pay the Physical Therapy Board of California the
22 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
23 Professions Code section 2661.3;

24 3. Taking such other and further action as deemed necessary and proper, including
25 restricting Mario Hinojosa, P.T. from supervising physical therapy assistants and aides.

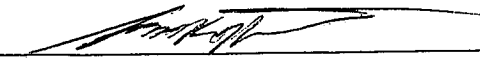
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DATED: May 9, 2011


STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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